IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5734 OF 2000

Shri Sadashiv Sakharam
Navaghane, aged 60 years
Occ: Nil. R/o. 37/5,
Samarth Complex, Dhankavadi
Pune - 411 043. ...Petitioner.

V/s

1. Additional Director General
and Special Inspector General
of Police (Law & Order), M.S.
Mumbai - 32.

2. The Secretary,
Home Department, Maharashtra State,
Mantralaya, Mumbai - 400 032.

3. The Superintendent of Police,
District Jalna, Jalna. ...Respondents.

Mr. N.V. Bandiwadekar, advocate for the
Petitioner.

None for the respondent - State.

CORAM: V.G. PALSHIKAR &
V.M. KANADE, JJ.

DATE : 3rd August, 2004.

ORAL JUDGMENT:

1. Petitioner is challenging the Order dated 25/02/1999 passed by the Maharashtra Administrative Tribunal, Mumbai (For short "MAT") in Original Application No.617 of 1994 whereby his application was dismissed by the MAT. Thereafter, a Review Petition was filed by the petitioner which also was

rejected.

2. Brief facts are as under:-

3. Petitioner was appointed as Police Sub-Inspector on 01/06/1964. On 15/12/1987, he was promoted as Police Inspector. On 27/12/1989, the petitioner was placed under suspension on the allegation that he had demanded and accepted an illegal gratification. A Charge Sheet was issued to the petitioner to hold a departmental enquiry in the said misconduct in January 1990. Petitioner's application seeking permission to engage a lawyer to defend himself was not decided and no orders were passed on the said application. The Enquiry Officer has submitted his report on 07/01/1992 and held that the charges against the petitioner were not proved. However, respondent No.1 did not accept the findings and conclusion arrived at by the Enquiry Officer and held that the charges were proved. He, therefore, issued a show cause notice to the petitioner. Petitioner filed a detailed reply to the notice and requested that the show cause notice may be cancelled. However, respondent No.1 did not accept the petitioner's reply and passed an order imposing

the penalty of removal from service. Petitioner filed an appeal. However, according to the petitioner, as he did not receive any order from the Appellate Authority, he preferred an application in the MAT. On 27/07/1994, the respondent No.2 dismissed the petitioner's appeal. This was also challenged by the petitioner in the Original Application. The application was dismissed by the MAT on 25/02/1999. The Petitioner filed a Review Application. However, his Review Application was dismissed on 02/07/1999.

SUBMISSIONS:

4. It is submitted by the learned Counsel appearing on behalf of the petitioner that if the Disciplinary Authority did not agree with the finding of the Enquiry Officer, in that case, it has to communicate to the delinquent officer the tentative reasons for disagreeing with the findings of the Enquiry Officer so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Enquiry Officer are not germane and the findings of the Enquiry Officer were

not liable to be interfered with. He submitted that this was the requirement which was laid down under Article 311 sub-clause (2) of the Constitution of India. In support of the said submission, he relied upon the judgment of the Apex court in the case of Yoginath D. Bagde Vs. State of Maharashtra and another reported in AIR 1999 SC 3734. He further submitted that after Enquiry Officer had exonerated the petitoner whether the respondent No.1 was justified in not accepting the said report and imposing the punishment of removal from service. He further submitted that the Enquiry Officer had denied an opportunity to the petitoner to defend himself in the departmental inquiry and, therefore, the principles of natural justice were violated and, therefore the inquiry proceedings were vitiated.

4. The learned Counsel appearing on behalf of the respondents vehemently opposed the said submissions. He submitted that the Disciplianry Authority had issued show cause notice and had recorded the reasons why it wanted to impose the penalty. He submitted that the ratio of the judgment in the case of Yoginath D. Bagde (supra) is not applicable to the facts of the present case. He submitted that

the MAT had considered the case of the petitioner and had rejected the application by giving cogent reasons.

FINDINGS:

5. In our view, so far as the first submission of the petitioner regarding denial of an opportunity to defend his case through lawyer is concerned, the absence of an advocate to represent the petitioner is not fatal and it cannot be said that it is a violation of principles of natural justice. In the present case, the presenting officer was a Deputy Collector and he was not a legal practitioner. Petitioner had an ample opportunity to cross-examine the witnesses and, in fact, he cross-examined them at great length. Rule 8(8) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which lays down the procedure for imposing the major penalties, reads as under:-

> "8. Procedure for imposing major penalties.

> (8) The Government servant may take the assitance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner or, the disciplinary authority, having regard to the circumstances of the case, so permits."

From the perusal of the said rule, it is clear that Rule 8(8) enjoins upon the Disciplinary Authority that in the event the presenting officer is a legal practioner, in that case, the delinquent may be permitted to engage an advocate. In the present case, the presenting officer was a Deputy Collector and was not a legal practioner. Thus, in our view, no prejudice has been caused to the petitioner. There is no violation of statutory right of the petitioner. There is also no violation of principles of natural justice. The second contention of the learned Counsel appearing on

behalf of the petitioner is that though he was promoted to the rank of Police Inspector by an order of Director General of Police he was removed by Additional Director General and Special Inspector General of Police who is an authority subordinate to the Director General of Police and, therefore, the said order was in violation of the protection granted under Article 311 of the Constitution of India. The said submission cannot be accepted. This submission was not made in the Original Application. However, it was made in the Review Application which was filed before the MAT. The MAT, after considering the said submission, rejected it after having examined the factual position that the appointment order has been signed by the Special Inspector General of Police and the removal order has been signed by the Special Inspector General of Police. We do not find any infirmity in the said findings which are given by the MAT. The said submission made by the learned Counsel appearing on behalf of the petitioner, therefore, cannot be accepted. The final submission made by the learned Counsel appearing on behalf of the petitioner that the reasons had not been recorded by the Disciplinary Authority in the

show cause notice stating as to why he disagreed with the Enquiry Officer and, therefore, the order of the Disciplianry Authority is bad in law, cannot be accepted. We have perused the show cause notice dated 10/6/1992 which is at Exhibit-E to the Petition. In para 5 of the show cause notice, the Disciplinary Authority has stated in clear terms that from the evidence which is recorded by the Enquiry Officer, the charges against the petitioner were clearly proved. It is stated that the conclusion which is arrived at by the Enquiry Officer are contrary to the evidence which has come on record and, therefore, the Disciplinary Authority did not accept the findings of the Inquiry Officer. In the case of Yoginath D. Bagde (supra), the Supreme Court has held that the Disciplinary Authority has to communicate to the delinqunet Officer "TENTATIVE" reasons for disagreeing with the findings of the Enquiry Officer. In our view, the Disciplinary Authority had clearly given the tentative reasons for disagreeing with the findings of the Eqnuiry Officer. The submission made by the learned Counsel appearing on behalf of the petitioner cannot be accepted. There is no reason why the

order passed by the MAT should be interfered with while exercising our jurisdiction under Articles 226 & 227 of the Constitution of India. Writ Petition is, therefore, dismissed. Rule is discharged with no order as to costs.

V.G.PALSHIKAR, J.

V.M. KANADE, J.